Supreme Court, U.S.
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No. 88-1478

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IN THE
SUPREME COURT OF THE UNITED STATES

****

October Term, 1988

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CORPUS CHRISTI TAXPAYERS ASSOCIATION,
TOM HUNT and JOE O'BRIEN,
Petitioners

-against-

CITY OF CORPUS CHRISTI, TEXAS
and STATE OF TEXAS,
Respondents

****

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals

for the Fifth Circuit

****

Glynn A. Pugh, Counsel
for Petitioners
723 N. Upper Broadway, Ste. 512
Corpus Christi, Texas 78401
(512) 881-8483

QUESTIONS PRESENTED

1- The lower Federal courts have extended to absurdity the Feldman rule of "inexorably intertwined", combining as one, two separate causes of actions, each based on denial of two different Constitutional rights.

2- Is a Federal district court (having subjectmatter jurisdiction based on denial of civil rights) deprived of jurisdiction by reason of a prior state court judgment, which is a nullity?

3- A conflict of law between circuits should be resolved: Fifth Circuit has imposed sanctions, whereas in an earlier case, Pennzoil v Texaco, infra, sanctions mere not imposed on a like litigant by the Second Circuit.

LIST OF PARTIES

The names contained in the caption of this case includes the names of all parties to this cause.

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OPINIONS OF LOWER COURTS

A copy of the opinion of the U.S. Court of Appeals for the Fifth Circuit is included in the Appendix, Pages 1-10. A copy of the Federal district court opinion is attached, App. Pages 11-15. Copies of the three opinions rendered in the court system of the state of Texas are also reproduced in the Appendix (trial court, App.pg.16, court of appeals, App.pp.17-23, and state supreme court App.pg. 24).

JURISDICTIONAL GROUNDS OF SUPREME COURT

The judgment of the U.S. Court of Appeals was entered in this case on August 22, 1988. A motion for rehearing, timely filed , was denied on October 14, 1988. The U.S. Supreme Court has jurisdiction under 28 USC Sec. 1254(1) [by writ of certiorari to U.S.Court of Appeals]. As to their Constitutional right to a hearing, Petitioners rely on Londoner v Denver (1908) 210 US 373. As to the nullity of state court judgments denying due process, Petitioners rely on Peralta v Heights Medical Center, Inc. (No. 86-1430, Decided 04/24/88) 56 Law Week pp. 4189-4191.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Petitioners assert denial of due process, XIV Amendment to the U.S. Constitution, in Appendix at Part 4. Petitioners rely also on Article 8, Section 21 of the Texas Constitution, (copy at Appendix Part 5), which provisions track the civil right set forth in Londoner v Denver, supra, namely, the requirement that

local governments must hold a hearing before an increase in ad valorem property tax can be adopted.

The statute, 28 USC Sec 1343, establishes jurisdiction of Federal district courts in cases where state governments, including subdivisions, have denied civil rights under 42 USC Sec. 1983.

The statute, 28 USC Sec. 1254(1), provides for Supreme Court jurisdiction over decisions of the U.S. Courts of Appeal.

STATEMENT OF THE CASE

The one basic fact here is undisputed: Petitioners were denied a hearing by the Corpus Christi city council. The court proceedings were quite limited for Petitioners' two separate causes of action: (1) denial of civil rights by the City and (2) denial of due process by state courts where Petitioners sued to enforce their civil rights. Both causes were dismissed at the outset by both the Texas and Federal courts. The

state trial court dismissed by a summary judgment. The Federal court dismissed Petitioners' separate suit, based on lack of subject-matter jurisdiction. The Federal district court's dismissal is here appealed.

Material Events in Progress of This Case

Petitioners asked at a meeting of the Corpus Christi City Council that a public hearing be held prior to setting of the City's 1984 ad valorem tax. The Petitioners had a right to a hearing under Federal law, Londoner v Denver, supra. The rule of Londoner was incorporated into state law by a Texas Constitution provision, Article 8, Section 21. The city council denied Petitioners' request for a public hearing, and no hearing was ever held by the City before it set the 1984 property tax rate. By refusing to hold a hearing, the City denied Petitioners their civil rights in violation of 42 USC Section 1983.

Petitioners then filed a suit in a state court seeking a court order to compel the

City to hold a public hearing. The trial court ordered the suit dismissed, granting the City's motion for summary judgment, App. Part 3. The summary dismissal of the suit was contrary to law, as there existed a material, disputed issue of fact. That fact, whether there was an increase in tax, was highly controverted before the trial court.

Petitioners alleged there was an 16.8% increase in the property tax from the year 1983 to the year 1984. App. Part 6. (Memorandum of Plaintiffs in the trial court proceeding at page 11). The City in its arguments took a contrary position, contending there was no increase in tax. This fact is a material issue because a hearing is required only if there is an increase in tax. Art. 8, Sec. 21 of Tx. Constitution. The constitutional provision is supplemented by a "TRUTH-IN-TAXATION" statute, which orders a public hearing only if the tax increase exceeds 3%. The 3% threshold was far exceed-

ed by the 16.8% tax increase alleged by Petitioners. App.Part 6. The Texas district court record shows clearly that a dispute as to a material fact existed. Under these circumstances the trial court erred in granting a motion for summary judgment dismissing the suit. Rule 166-A, Texas Rules of Civil Procedure. The arbitrary dismissal is wrong on its face. This dismissal constituted a denial of Petitioners' right to due process of law.

Petitioners in the state court proceedings asserted their Constitutional rights. App. Part 8 (Third Amended Petition). The Texas court of appeals in its decision, App. Part 3, denied all petitions of Petitioners asserting their rights to due process. The Texas supreme court held that no reversible error was made by the Texas court of appeals.

Application of Law

Petitioners proceeded first in the state court to enforce their civil rights before resorting to the Federal courts, as required

by court decisions, Dawson v Childs (C.A.,Tx, 1982) 665 F2d 777. The only forum available to Petitioners was the state court system even though Petitioners sought to enforce a Federally guaranteed civil right. Arbitrary procedures of the state court, dismissing wrongfully Petitioners suit, operated to deny them their Federally guaranteed civil rights.

The state courts declined to rule clearly on Petitioners' allegations of denial of due process and other Constitutional rights. Although Petitioners asserted denial of due process, the state courts declined to rule clearly thereon. Consequently, Petitioners, having asserted their right to due process in the state courts should not have their case dismissed by a Federal court based on default (failing to assert their Constitutional rights) in the state courts), App. Part 8 (Third Amended Petition). Likewise, as no state court adjudicated the denial of due process, there is no preclusion in the Federal courts. App. Part 3.

In conclusion, Petitioners, denied their civil rights by the City as no hearing was held by the City, now seek to enforce their rights through an order of the Supreme Court to compel the City to hold a hearing. Secondly, Petitioners, denied due process in the state courts by the arbitrary dismissal, seek to have the dismissal declared void and a nullity. Then the Petitioners can proceed to enforce their civil rights, guaranteed under Federal law. This state court dismissal deprived Petitioners of due process of law, a right guaranteed by Amendment XIV. See Peralta decision, supra.

Petitioners have been deprived of their civil rights by the City, and of due process by the state courts, in violation of their Constitutional rights. The Federal courts have jurisdiction of the subject matter of this suit, the right to a public hearing which was never held. The Supreme Court has jurisdiction over this cause, as above noted.

BASIS FOR FEDERAL JURISDICTION

Petitioners assert as basis for Federal court jurisdiction in the first instance that two denials deprived Petitioners of two different Constitutional rights. First, by being denied a public hearing Petitioners were denied their civil rights, 42 USC Sec.1983. Federal district courts have jurisdiction under the statute, 28 USC 1343. Federal jurisdiction exists concurrently with state courts. Petitioners properly initiated litigation in a state court.

The second denial of Petitioners' Constitutional rights, denial of due process, was done by the Texas court system through its summary dismissal of Petitioners' suit seeking an order to compel the City to hold a hearing. As explained elsewhere, this dismissal served to deny due process of law in violation of Amendment XIV of U.S. Constitution.

The subject matter of Petitioners' first cause of action (based on denial of civil rights) involves the right of taxpayers to

a hearing prior to any tax levy by a local government, a well established right guaranteed in the U.S. Supreme Court decision, Londoner v Denver (1908) 210 US 373. The Federal court system has jurisdiction of the subject matter, 42 USC Section 1983. And the Supreme Court has jurisdiction, Londoner case, supra; Arkansas Writers Project Inc. v Ragland, Comm'r of Revenue of Arkansas, No 85-1370, __ US __, decided 04/22/87.

The subject matter of the second cause of action consists of a denial of right to due process, which was done by the dismissal of Petitioners' suit by the Texas court system. Ostensibly, considering the provisions of the Texas Constitution, App. Part 5, an adequate remedy was provided Petitioners under state law in the state court system. The availability of this remedy precluded Petitioners proceeding first in the Federal court system. Creel v City of Atlanta (C.A.Ga., 1968) 399 F2d 777; Fromm v Rosewell (Ct.App. Ill,1985) 771 F2d

1089; Dawson v Childs (CA,Tx,1982) 665 F2d 705.

But here, in reality Petitioners' apparent remedy in the state court system was actually nonexistent, as their suit brought no relief. The dismissal order is invalid; it is contradicted by motions and pleadings in the trial court record. Dismissal by summary judgment was contrary to procedural law, a "a genuine issue as to a material fact" existed. App. Part 6 (Petitioners' eleven page Memorandum asserted that the tax increased by 16.8% [Pg.11]). The City, by denying that fact (App. Part 7, AFFIDAVIT of Juan Garza) made it a disputed fact. See Rule 166-A, TexasRules of Civil Procedure. Elsewhere in trial court proceedings the City actually asserts the existence of a genuine issue as to a material fact (App. Part 7, entitled "RESPONSE", at page 3, Paragraph VII).

The trial court dismissal serves as a precedent, effectively denying relief in the Texas court system not only to Petition-

ers but to all other Texas property owners. Thus, all Texas citizens are denied their civil rights under Section 1983 without any remedy, either in the state court system or the Federal court system. The instant state court proceedings are themselves proof of the inadequacy of any remedy in the state court system. This summary judgment, if not declared a nullity, serves as a precedent to deny taxpayers access to the Texas court system to enforce their civil rights. This state court dismissal violated the right to due process of law under the XIV Amendment, the Federal court system has subject matter jurisdiction. 28 USC Sec.1331. See also Pennzoil v Texaco (1987) 107 S. Ct. 1519, and Railroad Commissioners of Texas v Pullman (1941) 312 US 496, remanding to a Federal district court for additional proceedings.

The U.S. Supreme Court accepted jurisdiction in the recent case of Pennzoil v Texaco, supra, which involved Federal court system jur-

isdiction over state court litigation. The Supreme court should accept jurisdiction in this similar case, from the Fifth Circuit instead of the Second. Presented herein are many issues: scope of Federal judicial system jurisdiction, subject-matter jurisdiction, comity as to state litigation, the relationship of the 11th and 14th Amendments, among others. These issues may be needed in resolution, but they are beyond the scope of this petition.

Like the appeal in the recent Peralta case, the state court judgment rendered here is a nullity, as the judgments deprive litigants of the right to due process. The decision in Peralta is by no means unique. The instant case is like Peralta v Heights Medical Center (1988), supra, wherein a Texas court judgment was void because due process was denied in the Texas court system. The summary judgment, which dismissed Petitioners' state court suit seeking a hearing, served to deny due process of law, and therefore it too is a nullity as in Peralta.

SUBSTANTIALITY OF THE QUESTIONS PRESENTED

I- Constitutional Rights Denied

One substantial issue presented here is: Under current law in Texas, taxpayer's civil rights, even though Federally guaranteed, are unenforceable. In our cultural heritage and from our early colonial history, we have had in this nation great respect for the rights of taxpayers. A significant event in provoking the colonists to begin a war of independence was the Boston tea party. That demonstration was a protest of taxpayers who were being taxed while being denied any input into the tax system. The rights of taxpayers have been fought for, and they are valued highly in our country.

The state court dismissal has served to deny taxpayers their civil rights. It may be fairly stated that since 1985, Texas taxpayers have no right to a hearing before levy of an increase in taxes by local government, even if a local property tax be increased by 16.8%, or more. Local officials in Texas, statewide,

refuse to hold public hearings before levying an increase in taxes, as local officials now have a defense. Any suit filed by taxpayers to enforce their civil rights may be dismissed. Local officials need file only a motion for summary judgment, coupled with any kind of affidavit, as here. Consequently, in Texas the taxpayer's civil right to a hearing, as provided by Londoner v Denver, supra, no longer exists. Taxpayers have no recourse or remedy to enforce their civil right, unless, of course, the U.S. Supreme Court orders a hearing held in this proceeding.

The right of taxpayers to a hearing, as established by the U.S. Supreme Court in Londoner, has been voided here by court orders of a state court system. This is a substantial issue worthy of consideration by the U.S. Supreme Court.

II

The second substantial question involves denial of "due process" by a state court. Petit-

ioners' case, asserting a valid Federal civil right and Constitutional law issue, was wrongfully dismissed. The state court, by arbitrarily failing to rule on asserted denials of Constitutional rights, denied those rights to Petitioners. The denial of due process by the state courts is a substantial issue because Petitioners were required to proceed in state courts to enforce their Federally guaranteed rights. The action taken here was an arbitrary dismissal by the state trial court in the beginning, pre-trial. On appeal in the state court system, the denial of due process was sustained.

In the Texas court system arbitrary procedures, such as arbitrary dismissals, are not an uncommon event. The U.S. Supreme Court is aware of the lack of justice in the Texas judicial system. Two recent cases illustrate this. Pennzoil, supra, and Perlata, supra. Admittedly, it is well settled law that state court procedures are generally at the discretion of the states. Further, the application of procedures in state courts is a matter

based on the manner followed in the court system of each state, and this may be done consistently or in an inconsistent manner.

State court procedures, however, cannot be exercised in such a manner as to effect or avoid a Federal right. When a Federal right is involved, minimum standards of due process, as defined by Federal law, must be observed by state courts. As Justice Holmes wrote "Whatever [traps] the State may set for those who are endeavoring to assert rights the State confers, the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice." Davis v Wechsler (1923) 263 US 22,24. Presented here is an obvious abuse of discretion by a state trial judge, a frequent event in the Texas judicial system. But what is significant here is that this abuse operated to prevent the enforcement of a Federal right.

The U.S. Supreme Court should establish the rule that such patterns of abuse by state courts are not acceptable when Federal rights

are the subject of litigation. It is proper for the U.S. Supreme Court to inquire into the adequacy of both state procedures and practices, when federal rights and questions are involved. Lawrence v State Tax Commission of Mississippi (1932) 286 US 276,282 and see also Peralta. Enumerated requirements have included "fundamental fairness" and that "the decision of the state court rests upon a fair or substantial basis".

REASONS FOR GRANTING WRIT

1- Misapplication of holding in Feldman

The Court of Appeals for the Fifth Circuit erred in holding Federal district courts have no subjectmatter jurisdiction over cases previously before a state court. Under the proceedings in the lower Federal courts the law as to subjectmatter jurisdiction of Federal courts is now askew. In other similar cases the U.S. Supreme Court has remanded, vesting jurisdiction in lower Federal courts. Railroad Commissioners of Texas v Pullman (1941) 312 US 496; District of Columbia Ct. of Apps. v

Feldman (1983) 460 US 462; Monroe v Pape (1961) 365 US 167,182.

The district court reliance on Feldman is misplaced. The principal issue in Feldman involved whether certain local proceedings "were judicial in nature". The lower court relied principally on a phrase "inextricably intertwined", as if that phrase included the entire substance of Feldman. The accuracy and practicality of that phrase has since been improved upon by Justice Scalia, who recently coined a better substitute phrase:"inextricably integrated with the issue so litigated", Pennzoil v Texaco, supra.

The instant case differs from Feldman, as here there is an absence of an adjudication. Petitioners' suit being dismissed at the outset by a summary judgment. Petitioners' appeal (asserting denial of due process by the trial court) was likewise dismissed summarily without any "adjudication" on the merits. Instead of deciding issues the decision of the state ap-

pellate court discussed at length the controverted, material fact, namely, the tax increase. App. pp. 18-26.

The Court's attention is directed to page 487 of Feldman, the entire page, but note in particular the statement "the District Court does not have jurisdiction over these elements" and "We leave that question to the District Court on remand". Note that in Feldman the Supreme Court held that the Federal district court, as to certain issues, had subjectmatter jurisdiction. In the instant case, unlike in Feldman, there is no "adjudication in the state court" on the cause of action based on denial of civil rights under 42 USC Sec.1983, as Petitioners suit was dismissed at the outset by grant of a motion for summary judgment. Under Texas court decisions the scope of a summary judgment is narrowly limited, as to preclusion and res judicata. The scope of the instant summary judgment is limited: the court's holding is that the "Truth-in-Taxation" statute was not

violated because there was in fact no increase in the City's property tax. The City's motion for summary judgment sought only a limited holding.

2- Preservation of civil rights of taxpayers

The civil rights of taxpayers, as found in Londoner v Denver, should be reinstated for Texas taxpayers. State courts should not be allowed to deprive U.S. citizens of Federally guaranteed rights. The state court litigation has proceeded through the state supreme court, which denied Petitioners' application for writ of error, noting "No Reversible Error" in the lower court judgments.

3- Require state courts to observe Federal due process standards when Federal law issues are being decided

This case provides the Supreme Court with an opportunity to establish minimum procedural standards of due process, to be used by state court systems, at least when state courts are deciding Federal, Constitutional law issues. A

broad general rule has been stated: "persons seeking to vindicate federal rights are to be assured they have been fairly heard". As illustrated by the instant case no adequate remedy was provided here in the state courts, although Petitioners were entitled to relief.

All state court litigation has been completed here by Petitioners. No remand is needed as in the recent Pennzoil case, where state litigation had not been completed. There is no unresolved issue of Texas law, so Younger v Harris (1971) 401 US 37 (abstention) does not require a remand. The state court proceedings, such as they were, being so limited and wrongfully rendered, constituted no adjudication with preclusive effect under "res judicata", to cut off Petitioners' civil rights. Petitioners' cause of action was arbitrarily dismissed by the state courts. The abuse of discretion of the trial judge dismissing this cause of action denied due process of law in violation of U.S. Constitution Amendment XIV.

4- Petitioners' Constitutional Rights

Petitioners have been denied their civil rights by the City of Corpus Christi, and denied due process of law by the Texas court system. These rights must be maintained inviolate. If these Federal rights are to exist, they must be protected by the Federal court system, as was done in the recent Peralta decision. Federal Constitutional rights asserted in state court litigation may be guaranteed in state courts without interruption of state court systems.

5- Resolution of Conflict of Circuits

The Fifth Circuit imposed sanctions on Petitioners for litigating in the Federal court system seeking relief from unConstitutional judgments of a state court system. App. Part 1. But no sanctions were imposed on a similar litigant by the Second Circuit, or by the Supreme Court, in Pennzoil v Texaco, supra. This conflict of law should be resolved.

For these reasons Petitioners respect-

fully request the issuance of a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Fifth Circuit.

Respectfully submitted,

Glynn A. Pugh, Attorney for Petitioners
723 N. Upper Broadway, Suite 512
Corpus Christi, Tx 78401
(512) 881-8483